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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                 |                 |
|------------------------------|-----------------|-----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)    |
|                              | 10/727,264      | GORSLINE ET AL. |
| Examiner                     | Art Unit        |                 |
| David Faber                  | 2178            |                 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 October 2007.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 46-96 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 46-96 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date: \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

1. This office action is response to the Request for Continued Examination filed on 10 October 2007.

**This office action is made Non-Final.**

2. Claims 1-45 have been cancelled by the Applicant.
3. Claims 46-96 have been added.
4. The rejection of Claims 1-4, 8-11, 15-17, 18-20, 30-33, and 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Evan et al (US PGPub 20020036654, published 3/28/2002) has been withdrawn as necessitated by the cancellation of the claims. The rejection of Claims 5, 12, 21, 24-27, 34, and 37-41 under 35 U.S.C. 103(a) as being unpatentable over Evan et al in further view of Larson (US PG Pub 20020188635, published 12/12/2002) has been withdrawn as necessitated by the cancellation of the claims. The rejection of Claims 6-7, 13-14, 28-29, and 42-43 under 35 U.S.C. 103(a) as being unpatentable over Evan et al in further view of Larson in further view of Alao et al (US PGPub 20020147645, published 10/10/2002) has been withdrawn as necessitated by the cancellation of the claims. The rejection of Claims 22-23 and 35-36 under 35 U.S.C. 103(a) as being unpatentable over Evan et al in further view of Alao et al has been withdrawn as necessitated by the cancellation of the claims.
5. Claims 46-96 are pending. Claims 46, 63, and 80 are independent claims.

### *Claim Objections*

6. Claims 50, 67, and 84 are objected to because of the following informalities:

7. Claims 50, 67, and 84 recite the limitation "the at least one subcreative pool includes multiple subcreative pools" is written twice. The Examiner believes this a typographical error and that the limitation "the at least one subcreative pool includes multiple subcreative pools" should be viewed as written once as done so throughout this Office Action.

Appropriate correction is required.

***Claim Rejections - 35 USC § 101***

8. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

9. Claims 63-96 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**For your reference, below is a section from MPEP 2105 :**

(a) Functional Descriptive Material: "Data Structures" Representing Descriptive Material Per Se or Computer Programs Representing Computer Listings Per Se  
Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory). Such claimed data structures do not define any structural and functional interrelationships between the data structure and other claimed aspects of the invention which permit the data structure's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a data structure defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory.  
Similarly, computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit

the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

Computer programs are often recited as part of a claim. Office personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program. Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory.

Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material.  
When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat the claim as a process claim. See paragraph IV.B.2(b), below. When a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim.

10. Claims 63-96 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims appear to be claiming "software systems" i.e. systems without hardware indication, which is a computer program per se. Since the claims disclose computer program per se that is not embodied on a computer readable medium, they appear non-statutory.

### ***Claim Rejections - 35 USC § 102***

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 46, 50, 51, 53, 54, 59-62, 63, 67, 68, 70, 71, 76-79, 80, 84, 85, 87, 88, and 93-96 are rejected under 35 U.S.C. 102(b) as being anticipated by Evan et al (US PGPub 20020036654, published 3/28/2002).

As per independent Claim 46, Evans et al discloses a method comprising:

- receiving an aggregate creative definition, the aggregate creative definition being associated with an aggregate creative that is selectable by an advertising system; (Paragraph 0058; FIG 3, 302-304 - Discloses a number of advertising formats the user is able to choose from. Once the format is selected, the user chooses from a plurality of templates related to the advertising format. (Paragraph 0063))
- selecting, in accordance with the aggregate creative definition, at least one set of subcreatives from a plurality of subcreatives in the advertising system, the at least one selected set of subcreatives defining at least one subcreative pool; (Paragraph 0066 discloses a user is represented with options of pre-defined products ads, as well as new product ads the user may create. Paragraph 0071 discloses the inputting of user-inputted product references that include an image of the product and text to describe it, into the ad area of the template. These product references are retrievable from one or more databases. (Paragraph 0076-0077))
- selecting, from the at least one subcreative pool, a plurality of subsets of subcreatives; assembling a plurality of aggregate creative forms, each aggregate creative form comprising one or more of the subsets of

subcreatives in accordance with the aggregate creative definition; (Each template may contain multiple ad areas (Paragraph 0069) which each ad area able to contain one or more product references (Paragraph 0068, Page 6, lines 5 – 14; Paragraph 0071. Therefore, Paragraph 0088, Paragraph 0095: Discloses one embodiment wherein a template and a list of product references are submitted to a assistance layout program that lays out the product references into the template. Here, the computer would read the list of product references, select the product reference, obtain the product reference and place it into template based on the instructions of either priority based or order-based from the list. Each product being advertised has multiple product references from which the assistance layout program may choose. Since the program has multiple product references to choose from, it provides greater flexibility creating multiple advertisements. Thus a process of creating a computer-created advertisement, hence using a computer that is used to create ads using an automated assembly. Furthermore, it is inherently known if the Evans et al's method is capable of performing the functionality once, then it may generate the same functionality over again. Thus multiple computer-created advertisements have the functionality to be generated.)

- storing the plurality of aggregate creative forms, the plurality of aggregate creative forms associated with the aggregate creative in the advertising system; and when the aggregate creative is selected for transmission to users

on an electronic network by the advertising system, selecting one of the plurality of stored aggregate creative forms associated with the aggregate creative, and retrieving the selected aggregate creative form for the transmission. (Paragraph 0091 discloses the user accounts service that provides access to a memory storage device that the user may store data. Thus, a user using an Internet connection may store product references, templates and other custom information such as user's files, and data. In addition, the final advertisements may be stored on emails or websites. (Paragraph 0052) Furthermore, the user has the ability to have the advertisement that was just created be transmitted to users via a printer, email or posted on a web site (Paragraphs 0051, 0052, 0092, 0095, Claim 17)

As per dependent claim 50, Evan et al discloses wherein the at least one subcreative pool includes multiple subcreative pools; the at least one subcreative pool includes multiple subcreative pools, each subcreative pool corresponding to a different subcreative pool; and the subsets of subcreatives are grouped according to each subcreative pool. (Paragraph 0066 discloses the use of pre-defined product ads, the use of user-created product ads. Paragraph 0071 also discloses the use of adding product references, which include product ads and described text, to the template. These product references are retrievable from one or more databases. (Paragraph 0076-0077) In addition, Evan et al discloses an another embodiment of multiple databases of product references or pools of subcreatives wherein one of the database

of references is used for products that are advertised nationally while another database of references is used for products advertised locally. Thus, each database (pool) corresponds to a different pool used for different purposes. In addition, each subset of subcreatives in each of the databases corresponds just to that database.

As per dependent claim 51, Evans et al discloses wherein each aggregate creative form comprises subsets of subcreatives from each subcreative pool. (Paragraph 0066: Discloses an embodiment of sources of ads from the pre-defined product ads as well as product ads the user may create. Thus, the user has the ability to incorporate ads from both sources)

As per dependent claim 53, Evans et al discloses wherein the step of selecting at least one set of subcreatives comprises the step of selecting multiple sets of subcreatives, (Paragraph 0075) each set of subcreatives having one of graphic subcreatives, text subcreatives, and hyperlink subcreatives. (Paragraph 0071, lines 5-8)

As per dependent claim 54, Evans et al discloses the multiple subcreative pools include different numbers of subcreatives. (Paragraph 0066, 0075, 0076)

As per dependent claim 59, Evans et al discloses wherein at least one of the steps of selecting at least one set of subcreatives, selecting a plurality of subsets of subcreatives, and assembling a plurality of aggregate creative forms is further executed according to scheduling criteria for transmission to users. (Paragraph 0093, 0094: Discloses a scheduling process for creating the advertisement and distributing the advertisement)

As per dependent claim 60, Evans et al discloses wherein at least one of the steps of selecting at least one set of subcreatives, selecting a plurality of subsets of subcreatives, and assembling a plurality of aggregate creative forms is further executed according to criteria for targeting transmission to specific users. (e.g. Paragraph 0093, 0094, 0095: Discloses scheduling criteria, user setup criteria)

As per dependent claim 61, Evans et al discloses the aggregate creative definition enables the step of assembling a plurality of aggregate creative forms to occur even if a prescribed number of subcreatives is not available in one of the subsets of subcreatives. (Paragraph 0088, 0095)

As per dependent claim 62, Claim 62 recites similar limitations as in Claim 45 and is similarly rejection under rationale. Furthermore, Evans et al discloses the advertising system is configured to select aggregate creatives and non-aggregate creatives for transmission to users on the electronic network. (Paragraph 0063-0065, 0088, 0095: Template that contains the ad themes is selected to create the advertisement)

As per independent claim 63, Claim 63 recites similar limitations as in Claim 46 and is similarly rejected under rationale.

As per dependent claim 67, Claim 66 recites similar limitations as in Claim 50 and is similarly rejected under rationale.

As per dependent claim 68, Claim 68 recites similar limitations as in Claim 51 and is similarly rejected under rationale.

As per dependent claim 70, Claim 70 recites similar limitations as in Claim 53 and is similarly rejected under rationale.

As per dependent claim 71, Claim 71 recites similar limitations as in Claim 54 and is similarly rejected under rationale.

As per dependent claim 76, Claim 76 recites similar limitations as in Claim 59 and is similarly rejected under rationale.

As per dependent claim 77, Claim 77 recites similar limitations as in Claim 60 and is similarly rejected under rationale.

As per dependent claim 78, Claim 78 recites similar limitations as in Claim 61 and is similarly rejected under rationale.

As per dependent claim 79, Claim 79 recites similar limitations as in Claim 62 and is similarly rejected under rationale.

As per independent claim 80, Claim 80 recites similar limitations as in Claim 46 and is similarly rejected under rationale.

As per dependent claim 84, Claim 84 recites similar limitations as in Claim 50 and is similarly rejected under rationale.

As per dependent claim 85, Claim 85 recites similar limitations as in Claim 51 and is similarly rejected under rationale.

As per dependent claim 87, Claim 87 recites similar limitations as in Claim 53 and is similarly rejected under rationale.

As per dependent claim 88, Claim 88 recites similar limitations as in Claim 54 and is similarly rejected under rationale.

As per dependent claim 93, Claim 93 recites similar limitations as in Claim 59 and is similarly rejected under rationale.

As per dependent claim 94, Claim 94 recites similar limitations as in Claim 60 and is similarly rejected under rationale.

As per dependent claim 95, Claim 95 recites similar limitations as in Claim 61 and is similarly rejected under rationale.

As per dependent claim 96, Claim 96 recites similar limitations as in Claim 62 and is similarly rejected under rationale.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 47-48, 64-65, and 81-82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evan et al (US PGPub 20020036654, published 3/28/2002) in further view of Alao et al (US PGPub 20020147645, published 10/10/2002)

As per dependent claim 47-48, Evans fails to specifically disclose applying weighting criteria to the selected set of subcreatives in the at least one subcreative pool, wherein the plurality of subsets of subcreatives are selected according to the weighting criteria and wherein the aggregate creative definition includes one or more constraints for the step of selecting at least one set of subcreatives, the one or more constraints

determining permitted combinations of subcreatives for the at least one set of subcreatives. Since each subset has at least subcreative or just one, it has a combination of one. Therefore each subset has/is a subcreative. Thus, Alao et al discloses how advertisements are to be chosen based on constraints such as advertisement priority, advertisement weight, minimum advertisement display time, industry exclusions, overall frequency cap, minimum rotation interval, advertisement spec, advertisement type, and advertisement target. (Paragraph 0146, lines 15-21) Alao et al further details how ad-weighting works based on priority. (Paragraph 0146, lines 21-29) These constraints affect the level the priority thus changing the constraints producing a different list of order (combination) of display. Furthermore, when each advertisement item is edited or altered to include weight or constraints, it is considered generating a new or "copied" advertisement item with weight since it is different than the original unaltered advertisement.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have combined Evans et al with Alao et al's method since Alao et al's method would have provided a method for adaptive delivery of advertisements to a client.

Claims 64-65 recite similar limitations as in Claims 47-48 and are similarly rejected under rationale.

Claims 81-82 recite similar limitations as in Claims 47-48 and are similarly rejected under rationale.

15. Claims 49, 52, 58, 66, 69, 75, 83, 86, and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evan et al (US PGPub 20020036654, published 3/28/2002) in further view of Larson (US PG Pub 20020188635, published 12/12/2002)

As per dependent Claim 49, Claim 49 recites similar limitations as in Claim 46 and is rejected under rationale. Furthermore, Evan et al fails to specifically disclose that wherein each subset of subcreatives has a different combination of subcreatives, and the aggregate creative appears to rotate subcreatives when the step of selecting one of the aggregate creative forms and the step of retrieving the selected aggregate creative form for the transmission are repeated. Since each subset has at least subcreative or just one, it has a combination of one. Therefore each subset has/is a subcreative. Thus, Larson discloses the use of a preview (reduced-sized; Paragraph 0061) image display advertisements (subcreative) depicted in various preferred locations in an automatically rotating fashion wherein each ad (subcreative) may rotate by exchanging places after each time the page is served or loaded to the display. (Paragraph 0138-0139) When a page is served, the HTML page is generated to the server. (Paragraph 0052) Thus, the page that appears is selected by the user to appear and retrieved wherein the images are rotated each time the page is served.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have combined Evan et al's method with Larson's method since Larson's method would have provided digital edition web pages that incorporated preview images of advertising hard copy.

As per dependent claim 52, Claim 52 recites similar limitations as in Claim 49 and is similarly rejected under rationale.

As per dependent claim 58, Evans et al fails to specifically disclose the step of tracking transmitted subcreatives transmitted to users on the electronic network. However, Larson discloses collecting statistical information in regards to advertisements such indicating the number of times ads are displayed, and the page the ads are displayed. (Paragraph 0140)

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have combined Evan et al's method with Larson's method since Larson's method would have provided digital edition web pages that incorporated preview images of advertising hard copy with collecting statistical information.

As per dependent claim 66, Claim 66 recites similar limitations as in Claim 49 and is similarly rejected under rationale.

As per dependent claim 69, Claim 69 recites similar limitations as in Claim 49 and is similarly rejected under rationale.

As per dependent claim 75, Claim 75 recites similar limitations as in Claim 58 and is similarly rejected under rationale.

As per dependent claim 83, Claim 83 recites similar limitations as in Claim 49 and is similarly rejected under rationale.

As per dependent claim 86, Claim 86 recites similar limitations as in Claim 49 and is similarly rejected under rationale.

As per dependent claim 92, Claim 92 recites similar limitations as in Claim 58 and is similarly rejected under rationale.

16. Claims 55, 72, and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al (US PGPub 20020036654, published 3/28/2002)

As per dependent claim 55, Evans et al fails to specifically disclose wherein at least subcreative pools share one or more common subcreatives. However, Evans discloses an embodiment of utilizing multiple databases of product references wherein one database of references is for advertising nationally, while another database of references is for advertising locally. It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention that the same product reference be stored and used nationally and locally since it would provide the benefit of getting advertised at a national scale for more attention, but the same time, advertising a product that has well-known positive feedback in a local area.

As per dependent claim 72, Claim 72 recites similar limitations as in Claim 55 and is similarly rejected under rationale.

As per dependent claim 89, Claim 89 recites similar limitations as in Claim 55 and is similarly rejected under rationale.

17. Claims 57, 74, and 91 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al (US PGPub 20020036654, published 3/28/2002) in further view of Aphek (US PG Pub 20030191693, filed 4/8/2002)

As per dependent claim 57, Evans et al fails to specifically discloses wherein the step of assembling a plurality of aggregate creative forms occurs off-line from when the aggregate creative is selected for transmission. However, Aphek discloses the ability to create an advertisement off-line using the soft program for creating advertisements before transmitting the advertisement online to a Web server. (Abstract, Paragraph 0010-0011)

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have modified Evan et al's method with Aphek's method since Aphek's method would have provided the benefit of allowing advertisers to create and update graphical ads in an instant and independent manner without any delays and whenever desire.

As per dependent claim 74, Claim 74 recites similar limitations as in Claim 57 and is similarly rejected under rationale.

As per dependent claim 91, Claim 91 recites similar limitations as in Claim 57 and is similarly rejected under rationale.

#### ***Response to Arguments***

18. Applicant's arguments with respect to claim 46-96 have been considered but are moot in view of the new ground(s) of rejection.

Applicant has cancelled the original claims 1-45 resulting in withdrawn all rejection related to the original claims, and added new claims 46-96 which require a new ground(s) of rejection based on the new claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Faber whose telephone number is 571-272-2751. The examiner can normally be reached on M-F from 8am to 430pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stephen Hong, can be reached on 571-272-4124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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